IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3233 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
JANUARY 18, 2007.

This Court has issued notice restricted to back wages only. I have heard Shri Marpakwar, learned counsel for the petitioner and Shri Kakani, learned counsel for the respondent.

The learned counsel for the petitioner states that entitlement to back wages is not at all established in the matter. He places reliance upon the judgment of the Hon'ble Apex Court in the case of U.P. State Brassware vs. Udaynarayan, reported at 2006 (1) SCC 479, Haryana State Electronic Corporation vs. Mamni, reported at 2006 II CLR 1047, in support of his contention that grant of full back wages is not automatic.

Shri Kakani, learned counsel states that the respondent – employee deposed that he could not get any employment and he

further states that burden in this respect was upon the petitioner as has been rightly done by the Labour Court.

I have perused the impugned order of Labour Court. The Labour Court has made reference to cross examination of present respondent to observe that the respondent deposed that he did not apply for any job during the period he was out of employment. Thereafter it has observed that it is incumbent and obligatory on the part of the employer to prove that the employee was gainfully employed after termination till date. The approach is contrary to what has been laid down by the Hon'ble Apex Court in the above mentioned judgments.

In the light of the judgments mentioned above and in view of the fact that back wages are required to be paid to the respondent as the petitioners have not yet reinstated Respondent till today, I find that grant of 30% back wages to respondent will meet the ends of justice. There is dispute between the parties inasmuch as the petitioner – employer states that the petitioner has called upon the respondent – employee to join his

duties but he did not join the duties and the learned counsel for the respondent has disputed this contention. However, such dispute is not within the scope of this petition.

Hence, the impugned judgment dated 5.3.2003 passed in Complaint (ULPA) No. 420 of 1993 is accordingly modified only to the extent that the petitioner/ respondent before the Labour Court is directed to pay 30% of the back wages to the employee from 3.4.1993 till his reinstatement.

Writ Petition is thus allowed. Rule is made absolute in above terms. There shall be no order as to costs.

JUDGE

*GS.